

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DAVID JIMENEZ,

Petitioner,

v.

TAMMY L. CAMPBELL,

Respondent.

No. 1:23-cv-01367-JLT-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PETITIONER'S MOTION TO STAY,
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS WITHOUT PREJUDICE,
DIRECTING CLERK OF COURT TO CLOSE
CASE, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

(Docs. 2, 6)

David Jimenez, represented by counsel, is a state prisoner proceeding with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The magistrate judge issued findings and recommendations recommending that Petitioner's motion to stay be denied and the petition for writ of habeas corpus be dismissed without prejudice for failure to exhaust state judicial remedies. (Doc. 6.) Petitioner filed timely objections. (Doc. 7.)

According to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court holds the findings and recommendation to be supported by the record and proper analysis.

1 *Rhines v. Weber*, 544 U.S. 269 (2005), provides that “stay and abeyance” is available only
2 in “limited circumstances,” and only when: (1) there is “good cause” for the failure to exhaust; (2)
3 the unexhausted claims are not “plainly meritless”; and (3) the petitioner did not intentionally
4 engage in dilatory litigation tactics. 544 U.S. at 277–78. “The caselaw concerning what
5 constitutes ‘good cause’ under *Rhines* has not been developed in great detail.” *Dixon v. Baker*,
6 847 F.3d 714, 720 (9th Cir. 2017).

7 In the objections, Petitioner argues for the first time that his case is akin to *Blake v. Baker*,
8 745 F.3d 977 (9th Cir. 2014), where ‘evidence that his state post-conviction counsel failed to
9 discover, investigate, and present to the state courts,’ . . . established good cause for a *Rhines*
10 stay.” (Doc. 7 at 2–3 (quoting *Blake*, 745 F.3d at 983).) The petitioner in *Blake* asserted that he
11 failed to exhaust his ineffective assistance of trial counsel claim because his state post-conviction
12 counsel was ineffective and failed to investigate and retain experts to discover facts underlying
13 his unexhausted ineffective assistance of trial counsel claim. *Blake*, 745 F.3d at 982–83. A
14 showing that post-conviction counsel was ineffective under the standard of *Strickland v.*
15 *Washington*, 466 U.S. 668, 687 (1984), establishes good cause for failure to exhaust. *Blake*, 745
16 F.3d at 983. Here, however, Petitioner has not made a showing that *post-conviction* counsel was
17 ineffective under the *Strickland* standard.

18 Petitioner also argues that “Respondents typically argue that claims are untimely” and
19 thus, “Petitioner harbors reasonable confusion about whether his claims will be found timely,”
20 which satisfies the good cause requirement. (Doc. 7 at 3.) In *Pace v. DiGuglielmo*, 544 U.S. 408
21 (2005), the Supreme Court stated that a “petitioner’s reasonable confusion about whether *a state*
22 *filing would be timely* will ordinarily constitute ‘good cause’ for him to file in federal court.”
23 *Pace*, 544 U.S. at 416 (emphasis added). Here, Petitioner does not argue that he harbors
24 reasonable confusion about whether his *state* habeas filing would be timely.

25 Having found that Petitioner is not entitled to habeas relief, the Court now turns to
26 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
27 has no absolute entitlement to appeal a district court’s denial of his petition, and an appeal is only
28 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C.

§ 2253. Where, as here, the Court denies habeas relief on procedural grounds without reaching the underlying constitutional claims, the Court should issue a certificate of appealability “if jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Id.*

In the present case, the Court finds that reasonable jurists would not find the Court’s determination that the petition should be dismissed debatable or wrong, or that Petitioner should be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability. Accordingly, the Court **ORDERS**:

1. The findings and recommendations issued on October 16, 2023 (Doc. 6) are **ADOPTED IN FULL**.
2. Petitioner’s motion to stay (Doc. 2) is **DENIED**.
3. The petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**.
4. The Clerk of Court is directed to **CLOSE THE CASE**.
5. The Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: **November 21, 2023**


UNITED STATES DISTRICT JUDGE